

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.Rev.Pet.No. 3735 of 2007()

CRA.729/2005 of ADDL. DISTRICT & SESSIONS FAST TRACK (ADHOC)
COURT, MAVELIKKARA
CC.1173/2003 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA
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REVN. PETITIONER: APPELLANT/ACCUSED

K.MOHANAN, ALINTE VADAKKATHIL,
THEKKEKKARA, KURATHIKADU.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

RESPONDENTS: RESPONDENTS/STATE AND COMPLAIANNT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.
 2. SIVARAMAN, SWAMY SADANAM,
VARENICKAL, THEKKEKKARA.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3735 of 2007

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Dated this the 29th day of October, 2007

ORDER

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No. 1173 of 2003 on the file of the J.F.C.M, Mavelikkara challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions before me:-

The complainant examined as PW1 has initially stated that what was given to him was a signed cheque filled in all details and signed before hand. But in cross examination he has deviated from the said case to depose that a cheque filled up in all details was brought and he affixed the signature in the presence of the complainant. The

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complainant would also admit that he is not a money lender and he is not in the habit of lending money. His monthly income by selling rubber sheets is only Rs.1,500/-. It is such a person who claimed that he advanced a fabulous amount of Rs.2,50,000/- to the revision petitioner/accused. The learned counsel for the revision petitioner relied on the decision of the Supreme Court in **Narayana Menon v. State of Kerala** (2006(3) KLT 404)

5. In a prosecution under Section 138 of the Negotiable Instruments Act, the court is not concerned about the original transaction. Even according to the revision petitioner, the cheque in question contained his signature. He would, however contend that what was passed on to the complainant was a signed blank cheque when he availed of a loan which he claims to have promptly repaid. But he would have it that he forgot to take back the cheque leaf which has been misused after a lapse of 8 years. This is a version which cannot be believed for a moment. Notwithstanding the minor contradiction in the testimony of PW1, the fact remains that the cheque contains the signature of the revision petitioner. The only explanation for his cheque leaf finding its way into the custody of the complainant is an earlier loan which is claimed to have been discharged. The defence version put forward in this behalf is too good to be believed.

6. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

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7. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. The sentence imposed on the revision petitioner is set aside and instead he is sentenced to pay fine of Rs.2,50,000/-(Rupees two lakhs and fifty thousand only) which shall be deposited within **five** months from today and on default to make the payment, he shall suffer simple imprisonment for three months. The fine amount shall be paid as compensation under Section 357(1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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